

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

LANE MATTHEW BOURQUE §  
v. § CIVIL ACTION NO. 6:09cv28  
WARDEN WHEAT, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ENTERING FINAL JUDGMENT

The Plaintiff Lane Bourque, proceeding *pro se*, filed this civil action complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

An evidentiary hearing was conducted on April 16, 2009. At this hearing, Bourque testified concerning his claims that prison officials were deliberately indifferent to his safety; he also alleged that supervisory personnel failed to properly train or supervise their employees, that he had been denied due process in a prison disciplinary proceeding, and that these claims amounted to “state torts.”

After review of the pleadings, testimony, and records, the Magistrate Judge issued a Report on July 16, 2009, recommending that the lawsuit be dismissed. The Magistrate Judge accepted Bourque’s allegations as true, disregarding any contrary assertions in the prison records, and applied the appropriate legal standards to the facts as set out by Bourque. The Magistrate Judge determined that Bourque had not met the standards for a constitutional claim of deliberate indifference to his safety or a failure to train or supervise, that Bourque did not show that he had been deprived of a constitutionally protected liberty interest through the disciplinary case complained of, and that the Court should decline jurisdiction of Bourque’s state law claims under 28 U.S.C. §1337(c).

Consequently, the Magistrate Judge recommended that Bourque's lawsuit be dismissed as frivolous and for failure to state a claim as to its refiling in federal court, and that the statute of limitations be tolled on his state law claims so that these may be refiled in state court.

A copy of the Magistrate Judge's Report was sent to Bourque at his last known address, return receipt requested, but no objections have been filed; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings, testimony, and records in this case as well as the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED with prejudice as frivolous and for failure to state a claim upon which relief may be granted as to its refiling in federal court, but without prejudice as to the refiling of Bourque's state tort claim in the courts of the State of Texas. It is further

ORDERED that the statute of limitations on Bourque's state law claims is hereby tolled from the date that the lawsuit was originally filed until 30 days after the date of entry of final judgment in this case. It is further

ORDERED that any and all motions which may be pending in this action are hereby DENIED. Finally, it is

ORDERED that a copy of this opinion shall be sent by the Clerk to the Administrator of the Strikes List for the Eastern District of Texas.

**So ORDERED and SIGNED this 31st day of August, 2009.**

A handwritten signature in black ink, appearing to read "LEONARD DAVIS".

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**LEONARD DAVIS  
UNITED STATES DISTRICT JUDGE**